

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0109P

Use Tax

Calendar Years 1997, 1998, and 1999

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty assessed on an audit completed on January 3, 2001.

Taxpayer had a use tax accrual system in place at one of its locations in the latter part of 1998 and into 1999. Taxpayer did not accrue use tax at its other two Indiana facilities and utilized exemption certificates to lease and buy items.

Taxable items assessed in the audit consisted of building supplies, truck and forklift parts, books and subscriptions, office supplies, tools, rental equipment, pre and post production supplies, and various miscellaneous items.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer's audit report revealed that it remitted a minimal amount of use tax and had no use tax accrual system in place for two of the three Indiana business locations. The taxpayer failed to self assess tax as required by statute. For the three years at audit, the taxpayer remitted less than two percent (2%) of its use tax due.

The taxpayer believes it can demonstrate that it had acted in a reasonable manner, not due to willful neglect, and respectfully requests that the penalty assessed under IC 6-8.1-10.2.1 be waived. Taxpayer states it created policies and procedures to identify those items that should be

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taxable and to collect and remit use tax due. Taxpayer further instructed each location how to properly report the use tax to its Corporate Tax Department in Michigan on a monthly basis.

Taxpayer states it experienced turnover both within the corporate tax department and accounts payable departments at each of its Indiana locations in 1997 and 1998. During the subsequent transition period, taxpayer states it made a good faith attempt to ensure that all the required policies and procedures were being followed by engaging a public accounting firm to handle both the monthly tax compliance and the training of the new purchasing and accounts payable staff.

Taxpayer's audit revealed that it remitted less than two percent of its use tax due. Taxpayer has not established reasonable cause and has not exercised ordinary business care and prudence in carrying out its duty to remit tax due.

FINDING

Taxpayer's protest is denied.

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